

limitations, as the Board determines necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In making its determination whether there are practice deficiencies requiring remediation, the Board may consider the following:

1. Length of time license was inactive;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license by any professional or occupational board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of veterinary medicine or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to the practice of veterinary medicine or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:44-1.8 [(Reserved)] License reinstatement

(a) A licensee who has had his or her license suspended pursuant to N.J.A.C. 13:44-1.6(e) may apply to the Board for reinstatement. A licensee applying for reinstatement shall submit:

1. A reinstatement application;
2. A certification of employment listing each job held during the period of suspended license that includes the names, addresses, and telephone numbers of each employer;
3. The renewal fee set forth at N.J.A.C. 13:44-5.1 for the biennial period for which reinstatement is sought;
4. The past due renewal fee for the biennial period immediately preceding the renewal period for which reinstatement is sought;
5. The reinstatement fee set forth at N.J.A.C. 13:44-5.1; and
6. Evidence of having completed all continuing education credits for the current biennial registration period, consistent with the requirements set forth at N.J.A.C. 13:44-4.10.

(b) An applicant who holds a valid, current license in good standing issued by another state to engage in the practice of veterinary medicine and submits proof of having satisfied that state's continuing education requirements, shall be deemed to have satisfied the requirements of (a)6 above. If the other state does not have any continuing education requirements, the requirements of (a)6 above apply.

(c) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reinstatement, the Board may require the applicant to submit to, and successfully pass, an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reinstatement of the license. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant, as a condition of reinstatement of licensure, to take, and successfully complete, education or training, or to submit to supervision, monitoring, or limitations, as the Board determines necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In making its determination whether there are practice deficiencies requiring remediation, the Board may consider the following:

1. Length of time license was suspended;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license by any professional or occupational board;

5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of veterinary medicine or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;

6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and

7. Civil litigation related to the practice of veterinary medicine or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax Act

Proposed Amendments: N.J.A.C. 18:7-1.6 and 8.10

Proposed New Rule: N.J.A.C. 18:7-8.10A

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and 54:50-1; and P.L. 2018, c. 48, and P.L. 2018, c. 131.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-026.

Submit written comments by May 15, 2020, to:

Elizabeth J. Lipari
Administrative Practice Officer
Division of Taxation
PO Box 269
50 Barrack Street
Trenton, NJ 08695-0269
Email: Tax.RuleMakingComments@treas.nj.gov

The agency proposal follows:

Summary

The Division of Taxation (Division) is proposing new N.J.A.C. 18:7-8.10A, Receipts from services in the State; allocation for certain special industries. The proposed new rule provides a method for the allocation of receipts from certain service transactions for privilege periods ending on and after July 31, 2019. Existing N.J.A.C. 18:7-8.10, Receipts compensation for services; allocation for certain special industries, is proposed for amendment to provide that the existing rule applies to privilege periods ending prior to July 31, 2019.

New Jersey determines the portion of the total income of a corporation subject to the corporation business tax by using formulas that measure specific activities of the corporation assigned to this State. The New Jersey corporation business tax employs a single-fraction formula that apportions a share of the corporation's income to the State, based on a corporation's sales in this State over the corporation's total sales.

P.L. 2018, c. 48 amended the law for the sourcing of receipts stated at N.J.S.A. 54:10A-6(B)(4) and 54:10A-6.2 to provide for market sourcing based on where the benefit of the service is received by the customer. P.L. 2018, c. 131 fixed the effective date of the revised market sourcing requirements to privilege periods ending on and after July 31, 2019.

New N.J.A.C. 18:7-8.10A is proposed in order to provide sourcing rules for privilege periods ending on and after July 31, 2019, in accordance with these changes to the law. Proposed new paragraph (a)1 requires that the numerator of the sales fraction calculated in accordance with this section include receipts from sales of services not otherwise apportioned if the benefit of the service is received by customers within this State. This new paragraph differs from N.J.A.C. 18:7-8.10 by no longer requiring that the numerator of the sales fraction include receipts

from services based upon the cost of performance or amount of time spent in the performance of such services, or by some other reasonable method, if the service is performed both within and outside this State.

Proposed new paragraph (a)2 requires that, in determining whether the service is sourced to the State, a taxpayer shall include in the numerator of the receipts fraction, those receipts where customers derive the benefit of the service within this State. Proposed new paragraph (a)3 requires that, in the event services are provided to a recipient engaged in a trade or business in this State and another state(s), a taxpayer shall include in the numerator of the receipts fraction those receipts attributable to the customer's operations within the State. Examples are provided to illustrate how to deal with real estate surveying services, engineering services, computer software services, advertising services, prescription services, market analysis services, GPS services, legal information services, and payroll processing services.

Proposed new paragraph (a)4 provides that all amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons, and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

Proposed new paragraph (a)5 provides that, for allocation purposes, it is immaterial where the amounts were payable or where they actually were received.

Proposed new paragraph (a)6 provides a method for allocating certain lump sum payments and includes a method for allocating airline revenues.

Proposed new paragraph (a)7 details sourcing of certain lump sum payments in general for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)8 details the sourcing of rules for asset management services for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)9 details the sourcing rules for services of a registered securities or commodities broker or dealer for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)10 deals with sourcing of receipts (licensing fees) of a broadcaster from broadcast customers, such as a platform distribution company that in turn shows/airs the film programming to the ultimate customers/viewing audience.

In sum, proposed new N.J.A.C. 18:7-8.10A deals with the identification of receipts from services within the State for purposes of calculating the sales fraction. The enactment of P.L. 2018, c. 48 established New Jersey's current allocation methodology to require market-based sourcing. Consequently, for purposes of calculating the sales fraction, the proposed new rules and amendments reflect this statutory change to assign and allocate to New Jersey income earned by a taxpayer based upon where receipts are earned or sales are undertaken, and not where performance of the service(s) is undertaken or how much time and/or resources is spent performing said service(s).

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rule will have a positive social impact by clearly setting forth the manner in which receipts from certain service transactions shall be allocated to New Jersey for privilege periods ending on and after July 31, 2019.

Adoption of the proposed amendments and new rule will benefit the public by providing clarification as to the calculation of the sales fraction in the case of affected taxpayers. In particular, the proposed amendments and new rule will benefit the public by replacing the percentage formula at existing N.J.A.C. 18:7-8.10(c) with a flexible market-based allocation method.

The Division believes that the proposed amendments and new rule are consistent with P.L. 2018, c. 48, and P.L. 2018, c. 131, which established the method for calculating the sales fraction to include the market-based sourcing method when determining a multi-state corporation's taxable income under the Corporation Business Tax Act. The new apportionment formula is fully effective for privilege periods ending on and after July 31,

2019. The proposed new rule is consistent with the statutory changes to N.J.S.A. 54:10A-6(B)(4).

Economic Impact

The proposed amendments and new rule eliminate possible confusion for a class of taxpayers and their advisors over the manner in which receipts from sales of certain services are allocated to New Jersey. The effect on State revenues is indeterminate. The proposed amendments and new rule apply the objective statutory standard for allocating income of a multi-state corporation to New Jersey.

The enactment of P.L. 2018, c. 48, established market sourcing as the method for identifying receipts from services used to determine a corporation's taxable income under the Corporation Business Tax Act for privilege periods ending on and after July 31, 2019, and was intended to have a positive effect on the business climate in New Jersey. The proposed amendments and new rule are designed to reflect the statutory changes and to have a positive effect on business climate.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendments and new rule.

Jobs Impact

The proposed amendments and new rule are not expected to result in the creation or loss of jobs in New Jersey.

Agriculture Industry Impact

The proposed amendments and new rule will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rule apply to any company, including those which may be considered a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements unique to small businesses, but the requirements will be the same on businesses of any size, as discussed in the summary above. To the contrary, the proposed amendments and new rule may reduce recordkeeping and compliance requirements by allowing for reasonable approximations in determining where to allocate receipts from services. The proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method. Small businesses may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rule to determine the potential applicability of the changes to their own tax situations.

The mission of the Division of Taxation is to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth. Consistent with its mission, the Division of Taxation reviews its rule proposals with a view of minimizing the impact of its rules on small businesses to the extent possible.

Housing Affordability Impact Analysis

The proposed amendments and new rule will not result in a change in the average cost associated with housing or on the affordability of housing in the State. The proposed amendments and new rule would have no impact on any aspect of housing because the proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method.

Smart Growth Development Impact Analysis

The proposed amendments and new rule will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division of Taxation has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State because the proposed amendments and new rule deal with implementing amendments to the Corporation Business Tax Act.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.6 Subjectivity to tax; how created

(a) (No change.)

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: An entity regularly providing asset management services as defined [in] at N.J.A.C. 18:7-[8.10(e)]**8.10(a)5** from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: (No change.)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

18:7-8.10 Receipts; compensation for services; allocation for certain special industries

(a) For privilege periods ending before July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

Recodify existing (a)-(d) as **1.-4.** (No change in text.)

[(e)] **5.** Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

Recodify existing 1.-3. as **i.-iii.** (No change in text.)

[4.] **iv.** As used in [(e)1 through 3] **(a)5i through iii** above, the following words and terms shall have the following meanings:

Recodify existing i.-iv. as **(1)-(4)** (No change in text.)

[v.] **(5)** "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-[2m]**2.m** in the case of an individual, and under N.J.S.A. 54A:1-[2o]**2.o** in the case of an estate or trust, and in the case of a business entity where the actual seat of management or control is located in [the] this State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of [(e)3] **(a)5iii** above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

Recodify existing vi.-viii. as **(6)-(8)** (No change in text.)

[5.] **v.** (No change in text.)

[(f)] **6.** (No change in text.)

18:7-8.10A Receipts from services in the State; allocation for certain special industries

(a) For privilege periods ending on and after July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

1. The numerator of the sales fraction developed in accordance with this section includes receipts from services not otherwise apportioned, if the benefit of the service is received by the customer at a location within this State.

2. In determining whether the benefit of the services is received within this State, a taxpayer shall include in the numerator of the sales fraction receipts derived from customers within this State as provided in this paragraph.

i. For purposes of this paragraph, a customer within this State is either a recipient that is:

(1) Engaged in a trade or business and maintains a regular place of business in this State; or

(2) Is an individual that is not a sole proprietor, who is located in this State. If the location of the individual cannot be determined, the benefit of the services will be deemed to be received at the individual's billing address.

ii. A regular place of business in this State is not limited to the principal place of business of the customer and includes any office, factory, warehouse, or other business location in this State where the customer conducts business in a regular and systematic manner or maintains property or employees.

iii. A billing address is the location indicated in the pertinent customer order or records of the taxpayer as the address of record where notices, statements, or bills relating to the customer's account are mailed, or the location where services are provided to the customer.

3. In the event that services are provided to a recipient engaged in a trade or business for use in that trade or business located in this State and another state(s), a taxpayer shall include in the numerator of the sales fraction receipts based on the percentage of the total value of the benefit of the services received in all locations both within and outside of this State, as determined in this paragraph, or a reasonable approximation as defined at (a)3iv(1) below.

i. For purposes of this paragraph, receipts are attributable to this State if the recipient of the service(s) receives all of the benefit of the service(s) in this State.

ii. If the recipient of the service(s) receives some of the benefit of the service(s) in this State, receipts arising from the service(s) shall be attributable to this State in proportion to the extent to which the recipient receives the benefit of the service(s) in this State.

iii. In determining the "proportion to the extent to which the recipient receives the benefit of the service(s) in this State," a taxpayer may use the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, to determine how much of the benefit of the service(s) is received in this State.

iv. In determining the "proportion to the extent to which the recipient receives the benefit of the service(s) in this State," a taxpayer may use a reasonable approximation to attribute the location of receipts if none of the items listed at (a)3iii above provide the information necessary to determine how much of the benefit of the service(s) is received in this State.

(1) A "reasonable approximation" for attributing receipts under this subparagraph means that, considering all sources of information other than the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, the location where the benefit of the service(s) is received is determined in a manner that is consistent with the activities of the recipient to the extent such information is available to the taxpayer. "Reasonable approximation" shall be limited to the jurisdictions or geographic areas where the recipient, at the time of purchase, will receive the benefit of the service(s), to the extent such information is available to the taxpayer. If population is a reasonable approximation, the population used shall be the U.S. population as determined by the most recent U.S. census data. If it can be shown by the taxpayer that the benefit of the service(s) is being substantially received outside the U.S., then the populations of the countries where the benefit of the service(s) is being substantially received shall be added to the U.S. population for purposes of determining a reasonable approximation of the total value of the benefit of the services received in all locations. Information that is verifiable and specific in nature is preferred over unverifiable information that is general in nature. If the information is not readily verifiable or not readily available to the taxpayer, the taxpayer may request to use certain industry standard approximations.

Example 1: A taxpayer is in the business of providing real estate surveying services to developers and potential borrowers. A real estate development firm from another state is developing a tract of land in New Jersey. The real estate development firm from another

state utilizes the services of the taxpayer to survey the land in New Jersey. The survey work is completed and the plans are drawn in New Jersey. All of the taxpayer's receipts from this survey work are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 2: A taxpayer is in the business of providing engineering services and is headquartered in another state. A corporation headquartered in another state is building an office complex in New Jersey. The corporation contracts with the taxpayer to oversee construction of the buildings on the site. The taxpayer performs some of its service in New Jersey at the building site and additional service in its home state. All of the receipts from the taxpayer's engineering service are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 3: A taxpayer headquartered outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business office that is located in New Jersey. The software will only be used by the business office in New Jersey. The software development occurs in another state. All of the taxpayer's receipts from the software services are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 4: A taxpayer headquartered outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business offices that are located in New Jersey and several other states. The software development occurs in another state. The taxpayer's receipts from the software services that are attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the software used in New Jersey to the software used everywhere (domestic and/or international).

Example 5: A taxpayer derives advertising revenues in the course of providing or distributing content (for example, broadcasting television or radio programs or any other content over the air, satellite, cable system, or Internet). It sets its advertising rates based upon the audience it reaches or has the potential to reach. The portion of the taxpayer's advertising revenues or receipts that is attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the taxpayer's audience in New Jersey to the audience everywhere (domestic and/or international).

Example 6: A taxpayer performs prescription fulfillment service. The company is headquartered in State X and manages a prescription plan on behalf of a client that is headquartered in State Y with offices in 50 states. The client's employees are located in all 50 states, including New Jersey, but frequently travel and may fill prescriptions from their home pharmacy or pharmacies on the road. For lump sum payments from the client to the fulfillment service, the sourcing may be based on the percentage of the client's employees working in New Jersey. Alternatively, for pay as you go services where there is adequate documentation of where the prescription is filled, the percentage of prescriptions filled in New Jersey would be acceptable to verify receipts to be sourced to this State. If the company is unable to track the percentage of the client's employees working in New Jersey or the percentage of prescriptions filled in New Jersey, a reasonable approximation considering all sources of information, or a population-based methodology would be acceptable.

Example 7: The taxpayer is a company that performs marketing analysis services in California and New York for a client that is headquartered in New Jersey. The project was requested from and directed by the client's advertising division leader who is located in the client's Florida office. The deliverable is a memo detailing the results of the marketing analysis, which will be sent to the division leader in Florida. The information contained in the deliverable will ultimately be incorporated into an advertising strategy used

companywide, nationwide. The bill was sent to the client's accounts payable function in Illinois. This taxpayer's service would not be sourced to New Jersey since the benefit of the service is not utilized in New Jersey, nor is the benefit of the service received in New Jersey.

Example 8: A person purchases an in-dashboard GPS system that includes a periodic update service when the person brings the car to the dealership for periodic car maintenance. The update service ends after one year with an option for the car owner to renew the service directly with the GPS company, such that upon renewal, payments to the company are paid by the car's owner. In the first instance, where the periodic update service and GPS are bundled together the sale would be sourced to the location of the dealership. When the owner of the car renews the update service, the company's receipts from the service will be sourced to the customer's billing address.

Example 9: Taxpayer, a legal information company, provides a periodic legal research materials service. The service consists of periodic shipments of the latest statutes, regulations, and court cases based on the terms of contracts negotiated with each customer. The updates shipped to the customers consist of pocket parts for bound books or loose leaf binder inserts. A customer, with offices in New Jersey and three other states, contracts with the legal information company to receive weekly updates of the materials that are shipped to each office. The receipts included in the taxpayer's sales fraction will be sourced based on the percentage of updates that are received in the client's New Jersey office.

Example 10: Taxpayer, a payroll processing corporation, provides a payroll processing and remittance service to clients for a fee. The payroll processing corporation receives the data from clients and impounds funds from its clients for disbursing payroll checks and remitting tax monies to government agencies. The payroll processing corporation transmits the processed data back to its client that has offices and employees in New Jersey, Pennsylvania, South Carolina, California, and Ohio. The client hires the payroll processing corporation to process its payroll. The taxpayer's receipts from the payroll services will be sourced to New Jersey based on the number of the client's employees located in New Jersey since the monies for those employees are remitted to New Jersey.

4. All receipts obtained by the taxpayer in payment for services provided in the regular course of business are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the taxpayer reports the receipt as an item of income or a reduction in expense.

5. It is immaterial where the receipts from the sales of services were payable or where they were actually received.

6. Lump sum payments for services where the benefit is received both inside and outside of New Jersey must be apportioned in the manner described in (a)6i and ii below in order to result in a fair and reasonable receipts fraction.

i. Transportation revenues of an airline are from services in New Jersey based on the ratio of an airline's revenue miles in New Jersey divided by an airline's total revenue miles. Where an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals.

(1) "Revenue miles" means passenger revenue miles for passenger transportation, freight revenue miles for freight, or transportation rental revenue miles for aircraft rentals.

(2) The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the aircraft by the distance traveled in New Jersey divided by the number of revenue-paying passengers aboard the aircraft multiplied by the distance traveled everywhere.

(3) The freight revenue mile fraction is determined by dividing the freight ton revenue miles in New Jersey by the freight revenue miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

(4) The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayer's receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and N.J.A.C. 13:18-3.12 shall make calculations using such records.

(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the mileage fraction set forth in this subparagraph. Such allocated movable property shall be added to the fraction formed by non-movable property in New Jersey over non-movable property everywhere to arrive at the property fraction.

(2) With regard to the payroll fraction, wages of mobile employees, such as drivers, shall be allocated to New Jersey based upon mileage as set forth in this subparagraph. Such allocated payroll shall be added to the fraction formed by non-mobile employee wages in New Jersey over non-mobile wages everywhere to arrive at the taxpayer's overall payroll fraction.

7. If a taxpayer receives a lump sum in payment for services and for materials or other property, the sum received must be apportioned on a reasonable basis by providing:

i. The part apportioned to services is includible in receipts from services;

ii. The part apportioned to materials or other property is includible in receipts from sales; and

iii. Full details must be submitted with the taxpayer's return.

8. Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the procedures described in this paragraph.

i. In the case of asset management services directly or indirectly provided to individuals, receipts shall be allocated to New Jersey if the domicile of the individual is in New Jersey.

ii. In the case of asset management services directly or indirectly provided to a pension plan, retirement account, or institutional investor, such as private banks, national and private investors, international traders, or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

(1) In the event the domiciles of the beneficiaries are not or cannot be obtained, a reasonable proxy may be used to allocate receipts to New Jersey that reflects the trade or business practice and economic realities underlying the generation of receipts from the asset management services. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on specific facts and circumstances, reasonable proxies used to allocate receipts to New Jersey may take into account, among other things, the latest available population census data, the domicile of the sponsor of the plan, account, or pool of assets, the sponsor's payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

iii. In the case of asset management services directly or indirectly provided to a regulated investment company, receipts shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with:

(1) The portion of receipts deemed to arise from services within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes that ends within the taxable year of the taxpayer. The denominator of the fraction is the average sum of the beginning of the

year and end of year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

iv. As used in this paragraph, the following words and terms shall have the following meanings:

(1) "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this sub-subparagraph, "related activities" means administration services, distribution services, management services, and other related services;

(2) "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal, and tax services, but does not include trust services;

(3) "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares, or selling shares of a regulated investment company;

(4) "Management services" means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made, or the selling or purchasing of securities and related activities;

(5) "Domicile" shall have the meaning ascribed to it at N.J.S.A. 54A:1-2.m in the case of an individual and under N.J.S.A. 54A:1-2.o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in this State; provided; however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of (a)8iii above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder;

(6) In addition to amounts received directly from a regulated investment company, "receipts" shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such;

(7) "Regulated investment company" means a regulated investment company as defined at N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code; and

(8) "Sponsor" means the party that has contracted directly with the beneficiaries of the plan, account, or similar pools of assets.

v. See N.J.A.C. 18:7-1.6 regarding foreign advisors having customers in New Jersey.

9. Receipts from the services of a registered securities or commodities broker or dealer shall be sourced to New Jersey, if the customer is located within this State.

i. For purposes of this paragraph, the following words or terms shall have the following meanings:

(1) "Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475;

(2) "Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475; and

(3) "Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.

10. Receipts from a broadcaster's licensing of film programming to a broadcast customer shall be sourced to New Jersey based on the broadcast customer's viewing audience in New Jersey in proportion to the viewing audience in all states. If the information is indeterminable, a broadcast customer shall be deemed to receive the benefit of such license in New Jersey and the receipts from the licensing of the film programming shall be sourced based on the ratio of the population of New Jersey over the population of the other states in which the broadcast customer has viewers. If a broadcaster can

prove to the Director of the Division of Taxation by cogent evidence that is definite, positive, and certain in quantity and quality that the broadcast customer does not have any viewers in New Jersey, the receipts from licensing of film programming to the broadcast customer shall be sourced to the commercial domicile of the broadcast customer.

i. For purposes of this paragraph, the following words or terms shall have the following meanings:

(1) “Broadcast customer” means a person, corporation, partnership, limited liability company, or other entity, such as a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by the broadcaster. The term “broadcast customer” includes, but is not limited to, a licensee of film programming (for example, a platform distribution company paying a licensing fee to the broadcaster to air the broadcaster’s film programming);

(2) “Broadcaster” means a taxpayer that is engaged in the business of broadcasting, and includes a television broadcast network, a cable program network, or a television distribution company. The term “broadcaster” does not include a platform distribution company;

(3) “Broadcasting” means the transmission of film programming by an electronic or other signal conducted by microwaves, wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, or through any other means of communication directly or indirectly to viewers and listeners;

(4) “Commercial domicile” means, in the case of a business entity, the principal place where the actual seat of management or control is located;

(5) “Film programming” means one or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including, but not limited to, news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works; and

(6) “Platform distribution company” means a cable service provider, a direct broadcast satellite system, an Internet content distributor (domestic and/or international), or any other distributor that directly charges viewers for access to any film programming.

Example: Taxpayer Network Corp. is a broadcaster that licenses rights to its film programming to platform distribution companies (broadcast customers). Broadcast Customer A pays licensing fees to Network Corp. for the rights to distribute Network Corp.’s film programming to Broadcast Customer A’s customers who are located inside and outside of New Jersey. Broadcast Customer A broadcasts to viewers in New Jersey, Pennsylvania, New York, and Maine. Network Corp.’s receipts from Broadcast Customer A will be sourced to New Jersey based on a ratio of the New Jersey population over the population of New Jersey, Pennsylvania, New York, and Maine.